IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 22ND NOVEMBER 2007 / 1ST AGRAHAYANA 1929

WP(C).No. 30064 of 2007(D)

OS.1729/2005 of PRL.M.C.,TRIVANDRUM

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PETITIONER:

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1. AGNES, T.C.6/500(1), ARAPPURA,
ELIPPODE ROAD, VATTIYOORKAVU, THIRUVANANTHAPURAM.

2. SABANKUTTY, T.C.6/500(1), ARAPPURA,
ELIPPODE ROAD, VATTIYOORKAVU, THIRUVANANTHAPURAM.

3. THRESIA, T.C 6/500(1), ARAPPURA,
ELIPPODE ROAD, VATTIYOORKAVU, THIRUVANANTHAPURAM.

4. AROGYA RAJ, T.C.6/500(1), ARAPPURA,
ELIPPODE ROAD, VATTIYOORKAVU, THIRUVANANTHAPURAM.

5. AROGYA SELVI, T.C.6/500(1), ARAPPURA,
ELIPPODE ROAD, VATTIYOORKAVU, THIRUVANANTHAPURAM.

6. ALPHONSE, T.C.6/500(1), ARAPPURA,
ELIPPODE ROAD, VATTIYOORKAVU, THIRUVANANTHAPURAM.

BY ADV. SRI.RAM MOHAN.G.
SRI.G.P.SHINOD,SRI.MANU V.

RESPONDENTS:

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1. GOVINDAN, S/O.PACHAN, AGED 62 YEARS,
T.C.34/815-1, SAJI NIVAS, VATTIYOORKAVU,
THIRUVANANTHAPURAM.

2. BHARATHY, W/O.GOVINDAN,
T.C.34/815-1, SAJI NIVAS, VATTIYOORKAVU,

BY ADV. SRI.V.SURESH,SRI.G.SUDHEER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 22/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Appendix

Petitioners' Exts:

Ext.P1 the true photo copy of plaint in OS 1729 of 2005 pending before the Munsiff's Court, Thiruvananthapuram.

Ext.P2 the true photocopy of the written statement with counter claim filed by the petitioners herein, in OS 1729/2005 pending before the Munsiff's Court, Thiruvananthapuram.

Ext.P3 the true copy of the written statement to the counter claim and the affidavit filed by the respondents, herein, in OS 1729/2005 pending before the Munsiff's Court,Thiruvananthapuram.

Ext.P4 the true copy of the replication filed by the petitioners to Exhibit P3.

Ext.P5 the true photocopy of the IA 5419 of 2007 in OS 1729/2005 pending before the Munsiff's Court,Thiruvananthapuram

Ext.P6 the true copy of the objection filed by the petitioners to Exhibit P5.

Ext.P6 the true photocopy of the order dated 20.8.2007 in IA 5419/07 in OS 1729 of 2005 of the Principal Munsiff, Thiruvananthapuram.

M.N.Krishnan, J.

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W.P(C).No.30064 of 2007

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Dated this the 22nd day of November, 2007.

JUDGMENT

This Writ Petition is filed against the order of the Principal Munsiff, Thiruvananthapuram whereby as per I.A.No.5419 of 2007 in O.S.No.1729 of 2005 he has directed the defendants to begin the evidence. It is true that the plaintiffs have filed the suit for injunction and the defendants have filed a counter claim in the suit for mandatory injunction. In order to establish the case for injunction burden is on the plaintiffs to prove their case. It is submitted by the learned counsel for the defendants that nowhere he has admitted about the title of the plaintiffs. So whatever it may be, if the plaintiffs want to get the relief, it must be on the basis of the evidence they adduce and not on the weakness of the case of the defendants. Most probably when the suit is tried evidence may have to be let in in the counter claim as well. But the entitlement of the plaintiffs to get the decree

depends upon the evidence they adduce in their suit and therefore, the burden can never be shifted to the defendants in a case of this nature.

Therefore, the order under challenge is set aside and I direct the Munsiff to start the evidence. Writ Petition is disposed of accordingly.

M.N.Krishnan,
Judge.

ess 24/11